



## INTERIOR BOARD OF INDIAN APPEALS

Nelvette Siemion v. Assistant Secretary - Indian Affairs

11 IBIA 37 (01/04/1983)



## United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS  
INTERIOR BOARD OF INDIAN APPEALS  
4015 WILSON BOULEVARD  
ARLINGTON, VA 22203

NELVETTE SIEMION	:	Order Docketing and Dismissing
	:	Appeal
v.	:	
	:	Docket No. IBIA 83-12-A
ASSISTANT SECRETARY FOR INDIAN	:	
AFFAIRS	:	January 4, 1983

On December 27, 1982, the Board of Indian Appeals received a notice of appeal from Nelvette Siemion, through counsel, Thomas J. Lynaugh, Esq., Billings, Montana, seeking review of a November 24, 1982 decision of the Assistant Secretary for Indian Affairs. That decision upheld a decision of the Billings Area Director, Bureau of Indian Affairs, partitioning White Buffalo Allotment No. 2568 on the Crow Indian Reservation. The notice states that review is sought on the grounds that a finding has not been made, as required by 28 U.S.C. § 378 (1976), that partitioning is in the best interest of the heirs; that the decision to partition constitutes an abuse of discretion; and that appellant did not receive adequate notice of these proceedings.

This appeal is docketed under the above case name and number which should be used in all future inquiries and correspondence concerning the matter.

Procedural regulations for administrative appeals to the Board are found in 43 CFR Part 4, Subpart D. A copy of these regulations is enclosed for non-Governmental parties.

As was recently discussed in Kenneth Willie et al. v. Commissioner of Indian Affairs and Anne Begay v. Commissioner of Indian Affairs, 10 IBIA 135 (1982), under 43 CFR 4.330 the Board has jurisdiction over decisions of the Assistant Secretary for Indian Affairs only if those decisions are referred to it on a case-by-case basis or through rulemaking. See, e.g., Juanita Melsheimer v. Assistant Secretary for Indian Affairs, IBIA 82-59-A, docketed Sept. 29, 1982, and 25 CFR 13.15. In the absence of such referrals, decisions of the Assistant Secretary, a Secretarial-level official, are final for the Department.

Because the decision being appealed was rendered by the Assistant Secretary for Indian Affairs, the Board is not the proper forum to reach the issues raised in this appeal. The appeal must, therefore, be dismissed for lack of jurisdiction.

Counsel for appellant further requests that the issuance of trust patents on the partitioned land be postponed until this appeal is decided and that a hearing be granted. Because of the Board's disposition of this matter, both requests are denied. 1/

Therefore, pursuant to the authority delegated to the Board of Indian Appeals, 43 CFR 4.1(b), this appeal is dismissed.

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//original signed

Wm. Philip Horton  
Chief Administrative Judge

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//original signed

Franklin D. Arness  
Administrative Judge

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//original signed

Jerry Muskrat  
Administrative Judge

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1/ Counsel has, in previous filings before the BIA (included as attachments to the present notice of appeal), indicated that a full evidentiary hearing should have been held in this case. The Assistant Secretary notes that the original petition for partition was filed on December 31, 1976, and that negotiations have been in progress since that time. An extensive administrative record was, therefore, available to him in rendering his decision. The Board has not been delegated general authority to advise the Assistant Secretary what procedures must be followed in reaching a particular decision.